

# EXHIBIT 3

1

STATE OF MICHIGAN

2

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

3

UKRAINIAN FUTURE CREDIT UNION, - - -  
a state chartered credit  
union,

4

Plaintiff,

Case No. 2015-0524-CZ

5

vs.

6

ADRII B. GARAK, et al,

7

Defendants.

8

----- /  
9 PROCEEDINGS

10

11

BEFORE THE HONORABLE DIANE M. DRUZINSKI, CIRCUIT  
JUDGE

12

Mount Clemens, Michigan - Monday, October 17, 2016

13

APPEARANCES:

14

15

For the Plaintiff: JAMES W. BIGELOW (P42331)  
41570 Hayes Road, Suite E-1  
Clinton Township, MI 48038  
(586) 530-7788

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For the Defendant: WILLIAM R. SEIKALY (P33165)  
30445 Northwestern Hwy., Suite 250  
Farmington Hills, MI 48334  
(248) 785-0102

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1 For the Defendant: DANIEL RANDAZZO (P39935)  
 2 2731 S. Adams Road, Ste. 100  
 3 Rochester Hills, MI 48309  
 4 (248) 853-1003

1 Mount Clemens, Michigan  
 2 Monday, October 17, 2016  
 3 At about 10:44 a.m.  
 4

5 (Court, Counsel and parties present.)

6 THE CLERK: Ukrainian Future Credit Union  
 7 versus Garak.

8 MR. BIGELOW: Good morning, your Honor. For  
 9 the record, James Bigelow appearing on behalf of  
 10 plaintiff.

11 MR. RANDAZZO: Good morning, your Honor.  
 12 Dan Randazzo on behalf of Mr. Holyk.

13 MR. SEIKALY: Good morning, your Honor.  
 14 William Seikaly appearing on behalf of Lidia  
 15 Shibanov.

16 THE COURT: Okay.

17 MR. RANDAZZO: How would you like to  
 18 proceed, Judge?

19 THE COURT: Whose was the first motion  
 20 filed?

21 MR. RANDAZZO: I think I --

22 MR. BIGELOW: Mr. Randazzo.

23 MR. RANDAZZO: I think mine was as to  
 24 costs.

25 THE COURT: Okay. That's the one motion

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23 REPORTED BY: ANGELA M. LITTLE, CSR-6444, RPR  
 Certified Court Reporter  
 24 (586) 469-5832

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3 WITNESSES: PLAINTIFF

4 None.

5

7 WITNESSES: DEFENDANT

8 None.

9

11 EXHIBITS

14 ADMITTED  
 15 None offered.

1 that I don't have. Well, let me tell you what I  
 2 have. I have the Plaintiff's Motion Requiring --  
 3 Requesting Removal of Social Security Numbers and  
 4 Other Information. I have Plaintiff's Motion for  
 5 Entry of Default Judgment.

6 MR. BIGELOW: We can dispense with the  
 7 default judgment entered, Judge. I received notice  
 8 from a bankruptcy attorney on Friday Mr. and Mrs.  
 9 Garak filed a Chapter 7 case. I have a copy of the  
 10 petition here. It is a skeleton petition, there's  
 11 no schedules or a statement of financial affairs  
 12 attached, but I do have an order for administrative  
 13 closing as to those two. The co-debtor stay does  
 14 not apply because it's a Chapter 7 case.

15 THE COURT: Okay. So the motion for entry  
 16 of default judgment is withdrawn because the two  
 17 individuals have filed for bankruptcy?

18 MR. BIGELOW: Yes.

19 THE COURT: I have Plaintiff's Response to  
 20 Defendant Holyk's Motion for Costs and Attorney  
 21 Fees, but I don't have the motion. I'm so sorry.  
 22 I'm doing my best to get track of everything. And  
 23 then I have plaintiff's motion to redact that  
 24 information from the exhibit; I have the response.  
 25 Do you want to hit the high points of your motion?

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1 MR. RANDAZZO: Sure, Judge, I can do that.  
 2 THE COURT: This is on behalf of Holyk?  
 3 MR. RANDAZZO: Yes. I filed it under both  
 4 court rules under the case evaluation sanction and  
 5 under the frivolous case -- court rule. Under the  
 6 frivolous court rule, this court granted summary  
 7 disposition to Mr. Holyk. The counts that the  
 8 plaintiff filed against my client included breach of  
 9 contract, accounts stated, and a couple of fraud  
 10 counts as well as a waste. It was clear from the  
 11 evidence that was produced during discovery that the  
 12 plaintiff knew or had reason to know that Mr. Holyk  
 13 never signed any contract or promissory note with  
 14 regard to the loan. They knew that Mr. Garak and  
 15 Mr. Holyk had formed a business and that Mr. Garak  
 16 was borrowing the money for the purpose of buying  
 17 some property so that they could run their business  
 18 and Mr. Holyk in fact had pledged some property so  
 19 this whole straw transaction of fraud, there was no  
 20 basis in fact or law for them to bring that case,  
 21 those claims against Mr. Holyk. They had certainly  
 22 the breach of contract and the account stated had no  
 23 basis whatsoever, and I argue that the fraud did as  
 24 well.

25 The waste count, the granted summary

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1 disposition as to that as well, I believe that  
 2 Mr. Bigelow has filed a motion for reconsideration  
 3 that the Court hasn't made a ruling on yet with  
 4 respect to that, but I would argue that the Court  
 5 was correct in the first instance. And with regard  
 6 to that, Mr. Holyk, they knew that the entity  
 7 Northstar One was in possession of the property  
 8 because they received a check from Northstar One.  
 9 So none of the claims in my view had any basis in  
 10 fact that they had knowledge as to what the  
 11 transaction was right from jump street, and I think  
 12 it was just an attempt on their part to get as many  
 13 people into this case to get money from as it was a  
 14 money grab, basically.

15 As for case evaluation sanctions, the rule  
 16 indicates that the aggregate that when you're  
 17 talking about multiple parties, that it only applies  
 18 as to the plaintiff and the party at issue. The  
 19 case evaluation was rejected by the plaintiff. The  
 20 case evaluation as to Mr. Holyk was \$2,500. Clearly  
 21 the verdict was greater than that. I think Mr.  
 22 Bigelow was going to argue well the aggregate  
 23 verdict could be greater than that because I'm going  
 24 to take a judgment against Garaks but there was no  
 25 judgment at the time that the motion was granted so

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1 the aggregate verdict has to be in my favor. With  
 2 that, I'll -- those are the high points.

3 THE COURT: Mr. Bigelow.

4 MR. BIGELOW: Well, your Honor, as to the  
 5 waste claim, I have filed that reconsideration  
 6 motion based on one case. There is a Supreme Court  
 7 case that says you can sue a person individually for  
 8 waste. Mr. Holyk was the only possessor of this  
 9 property. There's never been any evidence that he  
 10 did not commit all the waste. He's never filed an  
 11 affidavit saying he didn't dump all the trash and  
 12 ruin this building. Certainly, there's no frivolity  
 13 there.

14 As to the case evaluation sanctions, we had  
 15 to come here multiple times regarding the conduct of  
 16 Mr. Holyk. We had to repossess multiple vehicles  
 17 from him. We had to get a court order requiring him  
 18 to provide us with the Max truck and that truck was  
 19 sold for slightly over \$4,000. That gets us over  
 20 the \$2,500 case evaluation sanction threshold.

21 We also had to file a motion just to get  
 22 access to the property, which he completely  
 23 controlled. He had the only key, the facility was  
 24 locked, and we had to do that just to get into the  
 25 building so that we could have it appraised and have

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1 the problem with the proposed trash removal assessed  
 2 as well.

3 Regarding the Bill of Costs submitted, your  
 4 Honor, there's no statutory authority listed for any  
 5 of the costs. And as to the attorney fees, there is  
 6 approximately \$7,000, which can't possibly be  
 7 awarded even if we were at that point because it's  
 8 only for attorney fees necessitated by the rejection  
 9 after the case evaluation. Mr. Randazzo has  
 10 approximately \$7,000 going back I think to when he  
 11 first answered the complaint. And also, your Honor,  
 12 I think it's premature because we still don't know  
 13 what the aggregate verdict is going to be and  
 14 Shibanov is still in the case.

15 THE COURT: I'm going to find your motion  
 16 and I will take it under advisement.

17 MR. RANDAZZO: Okay.

18 THE COURT: Okay. And, I apologize. I  
 19 don't know where it is.

20 MR. RANDAZZO: Do you want my copy, Judge,  
 21 just in case you can't find it?

22 THE COURT: I don't know how we could have  
 23 misplaced something that large.

24 MR. RANDAZZO: Well, this is not the whole  
 25 thing. This is multiple motions, Judge.

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1 THE COURT: I think Patty, we'll find it.  
 2 THE CLERK: Sure. We'll find it. It'll  
 3 turn up. They always do.  
 4 THE COURT: Don't worry about it. We'll  
 5 find it. It might have been between being received  
 6 and filed.

7 MR. RANDAZZO: Okay.

8 THE COURT: Okay. So defendant's motion  
 9 for costs and attorney fees as to Holyk is taken  
 10 under advisement and an opinion will issue. I have  
 11 the response. Okay. Now, I have your motion to  
 12 redact the Social Security numbers.

13 MR. BIGELOW: Remove those documents from  
 14 the file actually, your Honor.

15 THE COURT: It seems like there was an  
 16 agreement in terms of the Social Security numbers;  
 17 is that correct?

18 MR. BIGELOW: No --

19 MR. SEIKALY: Your Honor, we submitted --

20 MR. BIGELOW: -- not from us, your Honor.

21 THE COURT: You don't want them removed?

22 MR. BIGELOW: Well, I want the documents  
 23 themselves removed. Mr. Seikaly is trying to get an  
 24 order admitted which exonerates him from any  
 25 liability regarding the violation of the privacy

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1 rights of these 37 potential plaintiffs. He wants  
 2 the Court to enter an order which indicates --

3 THE COURT: Well, let's just talk about  
 4 your motion. Okay. You want an order requiring  
 5 removal of documents relating to Social Security  
 6 numbers and private confidential information from  
 7 the court file. That's Exhibit 3, 15 and 17, right?

8 MR. BIGELOW: Yes.

9 THE COURT: Okay.

10 MR. BIGELOW: From his supplemental to the  
 11 summary judgment motion.

12 THE COURT: Okay.

13 MR. RANDAZZO: And my understanding is we  
 14 agreed to that.

15 MR. SEIKALY: Well, I'm sorry, your Honor,  
 16 there's no question that the Social Security numbers  
 17 should be redacted. Nobody argues that point. I  
 18 submitted an order with an e-mail saying I'm not  
 19 suggesting that you're waiving any other rights, but  
 20 we ought to get the Social Security numbers  
 21 redacted.

22 THE COURT: No response?

23 MR. SEIKALY: Well, not only was there no  
 24 response, Mr. Randazzo and I both signed the order,  
 25 we sent it to Mr. Bigelow, it wasn't entered. It

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1 was sent to him within 48 hours. I mean, I was  
 2 really crazy busy that week but within 48 hours of  
 3 discovering this, because I didn't see these Social  
 4 Security numbers, none of us did, and we agree they  
 5 ought to be redacted, the numbers.

6 THE COURT: It seems to boil down to  
 7 whether they should be redacted or removed.

8 MR. SEIKALY: Well --

9 MR. BIGELOW: Judge, I think I'd need to  
 10 make my motion here. Can I do that?

11 THE COURT: Certainly.

12 MR. BIGELOW: Thank you. Your Honor, as far  
 13 as the proposed order Mr. Seikaly submitted, that  
 14 order indicates that the information was submitted  
 15 inadvertently. And, I have a board, ten board  
 16 members, total of 37 people that aren't very happy  
 17 with the fact that these Social Security numbers  
 18 were released potentially to the general public,  
 19 and, he would like an order which is going to  
 20 protect him and his client under the Social Security  
 21 Privacy Act from any claims made by these people. I  
 22 certainly don't have the authority to do that.

23 There's three documents we're talking  
 24 about. There's is the roster containing all the  
 25 Social Security numbers of the plaintiff's employees

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1 and board members.

2 THE COURT: That is Exhibit 3?

3 MR. BIGELOW: That is Exhibit 3. There is  
 4 absolutely no probative value to this document.  
 5 It's completely done to harass these people. And in  
 6 addition, your Honor, the other two documents  
 7 contain private information regarding credit union  
 8 members who have accounts. And one of them is even  
 9 an examination report response which was submitted  
 10 to the state that Mr. Seikaly doesn't have any basis  
 11 for even having. Your Honor, we don't know how  
 12 these documents were illegally obtained by Mr.  
 13 Seikaly and that's very important too.

14 I have filed a motion for disqualification  
 15 to be heard on the 31st. I spoke to your clerk on  
 16 the 7th I believe when I was advised that the Court  
 17 would not be hearing the motion ex parte.

18 THE COURT: Clearly, I would not hear it  
 19 ex parte, and I'm not going to get involved between  
 20 any other claims that might be pending between you  
 21 and Mr. Bigelow, your client, or any of these  
 22 individuals and any other opposing counsel or their  
 23 clients so don't try and set this up to make this  
 24 Court involved in that because I'm not going to get  
 25 involved in it. All right?

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1 MR. BIGELOW: And I think --  
 2 THE COURT: In terms of the Social Security  
 3 numbers in Exhibit Number 3, Exhibit 3 is going to  
 4 stay in. All the Social Security numbers will be  
 5 redacted. Okay.

6 Exhibit Number 15, this is the document,  
 7 the Management Action Review, the MARS documents.

8 MR. BIGELOW: Yes.

9 THE COURT: What's the problem with that?  
 10 It appears to deal with some of the individuals  
 11 and/or loans and/or information in this case.

12 MR. BIGELOW: I believe there are some  
 13 individuals who don't apply in this case.

14 THE COURT: There's some that do apply  
 15 also, correct?

16 MR. BIGELOW: Yes, I believe so.

17 THE COURT: Okay. And do you want --  
 18 clearly the ones that apply would seem to be  
 19 pertinent?

20 MR. BIGELOW: I don't think -- like I said,  
 21 Judge, this is a cumulative document and, you know,  
 22 Mr. Seikaly has not indicated how he obtained these  
 23 documents. I certainly would have never given him a  
 24 list of full roster of people's Social Security  
 25 numbers.

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1 THE COURT: We're past Social Security. I  
 2 look at it as two ways: A) I don't know why you  
 3 didn't give it to him if it's pertinent and, (B) I  
 4 don't know how we got it if it wasn't provided to  
 5 him. My rule now is to rule on these motions. I'm  
 6 not going to get involved in whether or not you want  
 7 to file misdemeanor charges against his clients or  
 8 Mr. Randazzo's clients, or if there's going to be  
 9 legal or criminal investigations. Not going to go  
 10 there so don't try to position it that way. All  
 11 right. Same for you counsel.

12 MR. SEIKALY: I haven't said anything, your  
 13 Honor.

14 THE COURT: In terms of Exhibit 15, those  
 15 documents they have some information relating to the  
 16 parties in this case.

17 MR. RANDAZZO: Right.

18 THE COURT: I mean, I read them, Mr.  
 19 Bigelow. I mean, we've got Darria Brown all over  
 20 this. Exhibit 15 is going to stay. In terms of  
 21 Exhibit 17, that's the January 8, 2013 letter to the  
 22 State of Michigan, correct?

23 MR. BIGELOW: Yes, it is.

24 THE COURT: Okay. And that's in response  
 25 to a recorded examination?

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1 MR. BIGELOW: Yes, and it contains numerous  
 2 credit union members who have accounts, they're  
 3 listed as well.

4 THE COURT: And the significance of this  
 5 document?

6 MR. SEIKALY: Relates to the fact that they  
 7 were well aware of what was going on with this  
 8 phone. And, your Honor, I'm sorry, I did not have a  
 9 chance to look at that document, but I wouldn't have  
 10 admitted it if -- I wouldn't have used it. Nobody  
 11 objected to its relevance at any point in time.

12 THE COURT: I know. It's been around for a  
 13 couple of months. The individuals who are not  
 14 pertinent to this lawsuit should be redacted --

15 MR. SEIKALY: Yes.

16 THE COURT: -- from Exhibit 17. I mean, I  
 17 recognize some of the names in here, but I don't  
 18 pretend to know all the names and individuals that  
 19 were discussed during the course of discovery. I  
 20 want you to look through Exhibit 17 now and tell me  
 21 which individuals in your opinion were related to  
 22 this --

23 MR. SEIKALY: Thank you, your Honor.

24 THE COURT: -- litigation. And then Mr.  
 25 Bigelow can tell me why he agrees or not and then I

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1 will make a ruling in terms of the remaining  
 2 individuals.

3 MR. SEIKALY: Your Honor, the relevance of  
 4 that document was to establish that as of the time  
 5 that Mrs. Shibanov left, there was no deficiency.

6 THE COURT: Okay.

7 MR. SEIKALY: The fact that they're  
 8 responding to the issues of deficiency in this loan  
 9 isn't even mentioned and my client is now gone, is  
 10 directly relevant how they viewed what was going on.

11 THE COURT: This is January, 2013?

12 MR. SEIKALY: Yes. And, your Honor, I have  
 13 no objection, by the way, to redacting the names.  
 14 It's not what we've done in this case, but if  
 15 Mr. Bigelow's concern is that there are names in  
 16 there, you can redact every name that's in there and  
 17 I'm not going to object. I'm not here to create  
 18 problems or embarrass people.

19 THE COURT: Okay. Then redact the names in  
 20 Exhibit 17.

21 MR. SEIKALY: Thank you, your Honor.

22 THE COURT: Okay. So plaintiff's motion is  
 23 granted in part as to Exhibit 3, the Social Security  
 24 numbers will be redacted; denied as to Exhibit 15,  
 25 that document stays; and granted in part as to

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1 Exhibit 17, the document stays and the names are  
 2 redacted. And I will take Holyk's motion for costs  
 3 under advisement as soon as I find the motion.

4 MR. SEIKALY: Very good. Your Honor, one  
 5 housekeeping matter. We have some motions in limine  
 6 that are going to be due, and we can't seem to agree  
 7 when what depositions get taken. The motion for  
 8 that it's not set for another two weeks. I hate to  
 9 bother the Court with it today, but I don't know  
 10 what to do. If there is this much chance of a trial  
 11 going forward, I'm going to get motions in limine  
 12 and I'm going to keep on going. I don't think that  
 13 there is. I think the Court made that clear in its  
 14 order, but I have done everything short of begging  
 15 to try and to move these two depositions and I can't  
 16 seem to get that done.

17 THE COURT: I don't technically have the  
 18 motion regarding your client's deposition in front  
 19 of me, although everybody's referred to it. What's  
 20 the stalemate, whether we finish Jakymowich's first  
 21 and then do Shibanov?

22 MR. SEIKALY: No. Your Honor, I mean, yes.  
 23 I mean, that's one of the issues and I've -- you've  
 24 read the -- you've had the e-mails back and forth,  
 25 I'm willing to do my client's depositions at the,

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1 you know, the same day as Mr. Jakymowich's finishes,  
 2 but what happened was is we asked for some dates, he  
 3 said I'm going to file a motion --

4 THE COURT: Well --

5 MR. SEIKALY: -- for clarification. Your  
 6 Honor, I was served with that motion today.

7 THE COURT: Okay.

8 MR. SEIKALY: We just need to get this  
 9 scheduled. We can do them, we can do Mr.  
 10 Jakymowich, which is limited to an hour and fifteen  
 11 minutes, two sessions. We can do a Monday and  
 12 Tuesday and he can take my client's Tuesday  
 13 afternoon because she's in a different time zone  
 14 anyhow.

15 THE COURT: You want me to decide this  
 16 today, gentlemen?

17 MR. BIGELOW: I want you to decide it the  
 18 31st, Judge. I think you need to look at my motion.

19 THE COURT: Which motion is that?

20 MR. BIGELOW: It's the motion related to  
 21 the discovery. Mr. Seikaly wouldn't produce his  
 22 client. He wouldn't give me dates. It's all laid  
 23 out in my motion.

24 THE COURT: I will just tell you right now,  
 25 I read the e-mail and I disagree with your version

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1 of them. So if you want to figure it out between  
 2 now and the 31st, feel free to do that. All right.

3 MR. BIGELOW: Thank you, Judge.

4 MR. RANDAZZO: Thank you, your Honor.

5 MR. SEIKALY: Your Honor, should we be  
 6 filing our motions in limine?

7 THE COURT: You should because we're going  
 8 to try this case at the end of November.

9 MR. SEIKALY: I disagree with you, but  
 10 that's only because of what you already said in your  
 11 order. But, thank you, your Honor.

12 (At 11:09 a.m., proceedings concluded)

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1 STATE OF MICHIGAN )  
2 ) SS  
3 COUNTY OF MACOMB )  
4  
5

6 CERTIFICATE OF COURT REPORTER

7  
8 I, Angela M. Little, Certified Court  
9 Reporter, of the Sixteenth Judicial Circuit, in the  
10 State of Michigan, do hereby certify that the  
11 foregoing pages, 1 through 21, inclusive, comprise a  
12 full, true, and correct transcript of the  
13 proceedings had in the matter of UKRAINIAN FUTURE  
14 CREDIT UNION, a state chartered credit union,  
15 Plaintiff, versus ADRII B. GARAK, et al, Defendants,  
16 Case No. 2015-0524-CZ, on Monday, 17th of  
17 October, 2016.

18

19

20 /s/ Angela M. Little  
ANGELA M. LITTLE - CSR-6444, RPR

21

22

DATED: 4/30/17

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24

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